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I. EPA Leadership and New Initiatives

a. Who's Who in the New Administration

- i. Administrator, **Scott Pruitt**
 - 1. <https://www.epa.gov/aboutepa/epas-administrator>
- ii. General Counsel, **Matthew Leopold**
 - 1. <https://www.epa.gov/newsreleases/us-senate-confirms-matt-leopold-serve-epa-general-counsel>
 - 2. <https://www.epa.gov/newsreleases/widespread-praise-matt-leopold>
- iii. Office of Water, **David Ross**
 - 1. <https://www.epa.gov/newsreleases/us-senate-confirms-david-ross-lead-epa-water-office>
 - 2. <https://www.epa.gov/newsreleases/widespread-praise-environmental-officials-david-ross>
- iv. Office of Air, **Bill Wehrum**
 - 1. <https://www.epa.gov/aboutepa/about-assistant-administrator-epas-office-air-and-radiation>
 - 2. <https://www.epa.gov/newsreleases/senate-confirms-william-wehrum-lead-epa-air-office>
- v. Office of Enforcement and Compliance Assurance, **Susan Bodine**
 - 1. <https://www.epa.gov/aboutepa/about-assistant-administrator-epas-office-enforcement-and-compliance-assurance>
 - 2. <https://www.epa.gov/newsreleases/us-senate-confirms-susan-bodine-lead-epa-enforcement-office>

II. EPA Strategic Plan and Initiatives

a. Draft Fiscal Year 2018-2022 Strategic Plan

- i. This draft Plan was available for public review and comment until October 31, 2017, and advances the Administrator's priorities and identifies three strategic goals:
 - Goal 1: Core Mission
 - Goal 2: Cooperative Federalism
 - Goal 3: Rule of Law and ProcessTaken together, these goals are designed to transform the way the Agency does business and more efficiently and effectively delivers human health and environmental results.
- ii. <https://www.epa.gov/planandbudget/strategicplan>

¹ <https://www.epa.gov/aboutepa/about-administrator-epas-new-england-region-region-1>

III. Clean Air

a. Clean Power Plan (“CPP”):

- i. **Proposed CPP repeal:** On October 16, 2017, EPA proposed that the CPP exceeds the EPA’s statutory authority and would be repealed. Public comment period open through January 16, 2018.
- ii. November 28 – 29, 2017: Public hearing in Charleston, West Virginia. More than 200 individuals presented oral testimony
- iii. EPA will hold three listening sessions on the proposed repeal of the Clean Power Plan.
<https://www.epa.gov/stationary-sources-air-pollution/listening-sessions-repealing-clean-power-plan>
- iv. **Advance Notice of Proposed Rulemaking:** Published in the Federal Register on December 18, 2017. The ANPRM offers the public the opportunity to comment on specific topics for the Agency to consider in developing any subsequent proposed rule. EPA is specifically soliciting information on systems of emission reduction that are applicable to or at an EGU facility, information on compliance measures, and information on state-planning requirements under Clean Air Act section 111(d). (For the ANPR, please see <https://www.federalregister.gov/documents/2017/12/28/2017-27793/state-guidelines-for-greenhouse-gas-emissions-from-existing-electric-utility-generating-units>)
<https://www.epa.gov/newsreleases/epa-announces-next-steps-after-proposed-clean-power-plan-repeal>
- v. **New Sources:** EPA continues to review the 111(b) rule, as required under Executive Order 13783.
<https://www.epa.gov/stationary-sources-air-pollution/public-hearing-repealing-clean-power-plan>
<https://www.epa.gov/newsreleases/epa-announces-additional-public-listening-sessions-proposed-repeal-clean-power-plan>

b. 2015 Ozone Standard Designations Litigation

- i. Two separate complaints were filed recently in the U.S. District Court for the Northern District of California alleging that EPA missed the statutory deadline for designating all areas of the country under the 2015 ozone NAAQS.
- ii. On December 4, the first complaint was filed by American Lung Association, American Public Health Association, American Thoracic Society, Appalachian Mountain Club, Environmental Defense Fund, Environmental Law and Policy Center, National Parks Conservation Association, Natural Resources Defense Council, Sierra Club, and West Harlem Environmental Action.
 1. On December 4, 2017, the American Lung Association et al. also filed a Motion for Summary Judgment requesting the court order EPA to issue area designations for all areas not yet designated no later than 180 days following issuance of a court order.
- iii. On December 5, the second complaint was filed by the States of California, New York, Connecticut, Illinois, Iowa, Maine, Maryland, Minnesota, Oregon, Rhode Island, Vermont, and Washington, the Commonwealths of Massachusetts and Pennsylvania, and the District of Columbia.

1. On December 29, 2017, the States filed a Motion for Summary Judgment as well.

c. 176A Petition

- i. On October 27, 2017, the Environmental Protection Agency (EPA) denied a petition from Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont under section 176A(a) of the Clean Air Act (CAA), which asks EPA to add Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, West Virginia and a portion of Virginia to the Ozone Transport Region (OTR), and alleges that these states significantly contribute to violations of the 2008 ozone national ambient air quality standards (NAAQS) in the OTR.

To see the petition: https://www.epa.gov/sites/production/files/2016-04/documents/states_noi_04182016.pdf

https://www.epa.gov/sites/production/files/2016-10/documents/courtlink_docket_us_dis_nvsd_1:16cv7827_10.06.2016.pdf

https://www.epa.gov/sites/production/files/2017-01/documents/176a_petition_fact_sheet.pdf

IV. Clean Land

a. Superfund Task Force

- i. **Memorandum: Prioritizing Superfund Program (5/22/17)**

1. The Memorandum outlined actions for prioritizing the Superfund program, reviewing the remedy selection process, and establishing a task force to provide recommendations on an expedited timeframe on how the agency can restructure the cleanup process.

<https://www.epa.gov/superfund/prioritizing-superfund-program-memo-epa-administrator-scott-pruitt-agency-management>

<https://www.epa.gov/newsreleases/epa-announces-superfund-task-force-recommendations>

- ii. EPA established the **Redevelopment Focus List**, an initial list of 31 Superfund National Priorities List sites with the greatest expected redevelopment and commercial potential.

<https://www.epa.gov/superfund-redevelopment-initiative/superfund-redevelopment-focus-list>

b. Peterson/Puritan Inc. Superfund Site

<https://cumulis.epa.gov/supercpad/cursites/csinfo.cfm?id=0101247>

- i. A new settlement estimated to be worth more than \$40 million between EPA and the Rhode Island Department of Environmental Protection (RIDEM) forecast to ensure that cleanup of “Operable Unit Two” of the Peterson/Puritan, Inc. Superfund Site in Cumberland and Lincoln, R.I. will move forward.
- ii. The agreement, lodged in federal court in Providence, resolves federal and state liability claims against nearly 100 potentially responsible parties for the cleanup of the site. Under the settlement, 22 of the settling defendants will be responsible for implementation of the remedy selected by EPA in 2015. These parties will also pay for the oversight costs incurred by EPA and RIDEM. The remaining settling parties are required to make payments to a trust to be used to help pay for performance of the site cleanup. The area being cleaned, known as Operable Unit

Two, is located adjacent to the Blackstone River and contains many parcels within the Blackstone River floodplain. These parcels include the J.M. Mills Landfill, the former Nunes transfer station, and an unnamed island, all of which contain waste material. These parcels were owned and operated as a single landfill operation by Joseph and Linda Marszalkowski through their business J.M. Mills, Inc. The selected remedy includes excavation and consolidation of contaminated soils and sediments, construction of a multi-layered impermeable cap, institutional controls and long term monitoring. The total cost for the selected remedy is estimated to be \$40.3 million.

c. GE-Pittsfield/Housatonic River Site

<https://www.epa.gov/ge-housatonic>

- i. On October 24, 2016, EPA issued its final decision on its RCRA Corrective Action permit, or Rest of River permit, which outlines a final cleanup plan for a 125-mile stretch of the Housatonic River from Pittsfield, Massachusetts through Connecticut. The final cleanup plan is also referred to as the Final Permit Modification for Rest of River: <https://semspub.epa.gov/work/01/593921.pdf>.
- ii. EPA's cleanup plan follows an extensive public comment period and a dispute by the responsible party, General Electric Company (GE). The plan takes all of the comments received through those processes into consideration. The final cleanup will utilize a combination of targeted soil and sediment removal, riverbed capping and monitored natural recovery to address risks posed by polychlorinated biphenyls (PCBs).
- iii. In November 2016, GE, and four other entities appealed the Rest of River permit to EPA's Environmental Appeals Board (EAB). Massachusetts, Connecticut, and four amicus parties also submitted arguments, largely in support of EPA's cleanup plan. In June 2017, the EAB conducted oral arguments. A decision from the EAB is currently pending. In the interim, GE is submitting design plans associated with uncontested portions of the final Permit, and EPA is currently reviewing those submittals.
<https://www.epa.gov/ge-housatonic/cleaning-housatonic>

d. Centredale Manor, Rhode Island

- i. A trial was held in Federal Court in the District of Rhode Island over EPA's ROD and Unilateral Administrative Order ("UAO") issued to Emhart/Black & Decker
- ii. The trial court upheld the ROD except for 3 areas, which it ruled were "arbitrary and capricious;" and did not enforce UAO.
- iii. EPA filed Motion for Reconsideration as well as an Interlocutory Appeal
- iv. In addition, Centredale Manor was included on the list of Superfund Sites that Administrator Pruitt has targeted for immediate and intense attention. This list of superfund sites across the country are in direct response to the Superfund Task Force Recommendations, issued this summer, calling for this list.
<https://www.epa.gov/newsreleases/centredale-manor-superfund-site-rhode-island-included-epa-list-targeted-immediate>

e. Coakley Landfill Superfund Site

- i. In 2017, EPA finalized the 2017 Addendum to the Fourth Five-Year Review for the Coakley Landfill Superfund Site, located in North Hampton, NH. This Five-

Year Review Addendum addressed several concerns with groundwater contamination (including assessment of PFAS), to accurately assess the protectiveness of the remedy.

- ii. This past year, EPA coordinated with NHDES and the Coakley Landfill Group (CLG) to test numerous private drinking water wells around the site for PFAS (over 80 have been tested) and none of the wells tested exceeded the EPA Public Health Advisory/NHDES Ambient Groundwater Quality Standard (70 parts per trillion (ppt)).
- iii. <https://semspub.epa.gov/work/01/100001375.pdf>

V. Clean Water

a. Clean Water Rule: <https://www.epa.gov/cleanwaterrule>

- i. On August 29, 2015, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) published a final rule (the “Clean Water Rule”) defining the scope of waters protected under the Clean Water Act (CWA or the Act). Following appeals by multiple parties, the U.S. Court of Appeals for the Sixth Circuit, on October 9, 2015, stayed the Clean Water Rule nationwide pending further action of the court. The Supreme reviewed the question of whether the court of appeals has original jurisdiction to review challenges to the 2015 Rule (*see discussion of National Association of Manufacturers v. Department of Defense* below).
- ii. In response to the stay, EPA and the Corps resumed nationwide use of the agencies’ prior regulations defining the term “waters of the United States.” The definition currently in effect is the definition promulgated in 1986/1988, implemented consistent with subsequent Supreme Court decisions and guidance documents.
- iii. On February 28, 2017, President Trump issued an Executive Order directing EPA and the Corps to review the Clean Water Rule and publish for notice and comment a proposed rule rescinding or revising the rule. Accordingly, on June 27, 2017, the agencies proposed to rescind the Clean Water Rule and re-codify the regulatory text that existed prior to 2015 defining “waters of the United States.” The public comment period on that proposal closed on September 27, 2017. This action would, when finalized, provide regulatory certainty pending a second rulemaking that the agencies plan in 2018 to replace the approach in the 2015 Clean Water Rule.
- iv. Additionally, on November 22, 2017, the agencies proposed to add an applicability date to the 2015 Clean Water Rule and plan to move quickly to take final action in early 2018. The agencies proposed that the 2015 rule would not be applicable until two years after the action is finalized and published in the Federal Register. The agencies intend to maintain the status quo by adding the applicability date and thus provide continuity and regulatory certainty for regulated entities, states, tribes, agency staff, and the public while the agencies consider possible revisions to the 2015 Rule.
- v. For more information:
<https://www.epa.gov/cleanwaterrule/clean-water-rule-litigation-statement>;
<https://www.epa.gov/cleanwaterrule/clean-water-rule-factsheets>

- b. *National Association of Manufacturers v. Department of Defense*, et al., No. 16–299
 - i. On January 22, 2018, the Supreme Court issued a unanimous decision, in which it found that the 6th Circuit Court of Appeals lacked jurisdiction to review EPA’s rule revising the definition of “waters of the United States” (WOTUS rule). The Court specifically held that “the WOTUS Rule falls outside the ambit of §1369(b)(1)” and as a result “challenges to the Rule must be filed in federal district courts.” The Court “reverse[d] the judgment of the Court of Appeals and remand[ed] the case with instructions to dismiss the petitions for review for lack of jurisdiction.”
https://www.supremecourt.gov/opinions/17pdf/16-299_8nk0.pdf
- c. **Lead and Copper Rule**
 - i. Consistent with E.O. 13132, EPA is consulting with state and local government officials, or their representatives during the development of the proposed revisions to Lead and Copper Rule. EPA will post consultation materials, letters and comments below as they become available.
<https://www.epa.gov/dwstandardsregulations/lcr-federalism-consultation>
<https://www.epa.gov/dwstandardsregulations/lead-and-copper-rule-long-term-revisions>
- d. **Nutrient Pollution**
 - i. <https://www.epa.gov/nutrientpollution>
- e. **Infrastructure**
 - i. Executive Order 13807 (August 15, 2017), *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*
<https://www.federalregister.gov/documents/2017/08/24/2017-18134/establishing-discipline-and-accountability-in-the-environmental-review-and-permitting-process-for>

VI. Cooperative Federalism

- a. *Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States*, Susan Bodine

VII. Rule of Law and Process

- a. **Directive** from Administrator Pruitt, Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements (10/16/17)
 - i. The Directive requires that EPA take steps to promote transparency and public participation in the consent decree and settlement agreement process involving lawsuits against EPA.
<https://www.epa.gov/newsroom/directive-promoting-transparency-and-public-participation-consent-decrees-and-settlement>
 - ii. **Memorandum**: Adhering to the Fundamental Principles of Due Process, Rule of Law, and Cooperative Federalism in Consent Decrees and Settlement Agreements (10/16/17)
 - 1. Memorandum from Administrator Pruitt, which accompanied the October 16 Directive.
<https://www.epa.gov/newsroom/directive-promoting-transparency-and-public-participation-consent-decrees-and-settlement>

b. Regulatory Reform

<https://www.epa.gov/laws-regulations/regulatory-reform>

- i. **Executive Order 13771**, 82 Fed. Reg. 9339 (Feb. 3, 2017)
Reducing Regulation and Controlling Regulatory Costs directs all agencies to repeal two existing regulations for each new regulation issued in FY 2017 and thereafter.
- ii. **Executive Order 13777**, 82 Fed. Reg. 12285 (Mar. 1, 2017)
Enforcing the Regulatory Reform Agenda directs federal agencies to establish a Regulatory Reform Task Force (Task Force). One of the duties of the Task Force is to evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification.
 1. Memorandum from Administrator Pruitt: *Executive Order 13777: Enforcing the Regulatory Reform Agenda* (Mar. 24, 2017)
<https://www.epa.gov/laws-regulations/memorandum-executive-order-13777-enforcing-regulatory-reform-agenda>
- iii. **Executive Order 13783**, 82 Fed. Reg. 16093 (Mar. 31, 2017)
Promoting Energy Independence and Economic Growth. The E.O. directs EPA to review the Clean Power Plan, related rules, and the NSPS for Oil and Gas, and further directs all agencies to review existing regulations, orders, guidance documents and policies that potentially burden the development or use of domestically produced energy resources.